

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MICHAEL DEWAYNE WHALEY,)	
Petitioner,)	
)	
vs.)	No. 3:18-CV-144-C-BH
)	
)	
COURT OF CRIMINAL APPEALS, et al.,)	
Respondents.)	Referred to U.S. Magistrate Judge¹

**RECOMMENDATION REGARDING REQUEST TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

Before the Court is the petitioner's *Application to Proceed in District Court Without Prepaying Fees or Costs*, received on January 25, 2021 (doc. 48), which is liberally construed as a motion to proceed *in forma pauperis* on appeal.

- (X) The request for leave to proceed *in forma pauperis* on appeal should be DENIED because the Court should certify under Fed. R. App. P. 24(a)(3) and 28 U.S.C. § 1915(a)(3) that the appeal is not taken in good faith, and that it presents no legal points of arguable merit and is therefore frivolous for the reasons set forth in the findings, conclusions, and recommendation filed in this case on October 8, 2019 (doc. 44). The request also should be denied because the United States Court of Appeals for the Fifth Circuit has sanctioned the petitioner in the amount of \$450 and barred him from filing in the Fifth Circuit or any court subject to the Fifth Circuit's jurisdiction "any challenge to his conviction and sentence until the sanction is paid in full, unless he first obtains leave from the court in which he seeks to file his pleadings." *In re Whaley*, No. 20-10924 (5th Cir. Oct. 8, 2020).

If the Court denies the request to proceed *in forma pauperis* on appeal, the petitioner may challenge the denial by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within thirty days after service of the notice required by Fed. R. App. P. 24(a)(4). See Fed. R. App. P. 24(a)(5).

¹ By Amended Miscellaneous Order No. 6 (adopted by Special order No. 2-59 on May 5, 2005), requests to proceed *in forma pauperis* on appeal are automatically referred.

SIGNED this 29th day of January, 2021.


IRMA CARRILLO RAMIREZ
UNITED STATES MAGISTRATE JUDGE